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September 27, 2001

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Filed Electronically Via ECFS

Ms. Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Attn: Patrick Forster, Senior Engineer – Room 3-A104
Wireless Telecommunications Bureau / Policy Division

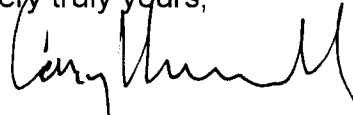
**Re: *Brookings Municipal Utilities d/b/a Swiftel Communications
Request for Temporary Waiver of Rule Section 20.18(g)
CC Docket No. 94-102***

Dear Ms. Salas:

Attached below is a request for temporary waiver of the Commission's Rules for implementing E911 Phase II Service which we are filing on behalf of Brookings Municipal Utilities d/b/a Swiftel Communications ("Swiftel")

Please direct any questions or correspondence regarding this filing to the undersigned counsel.

Very truly yours,



John A. Prendergast
D. Cary Mitchell
Counsel to Brookings Municipal Utilities
d/b/a Swiftel Communications

Att.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re Request of

**Brookings Municipal Utilities d/b/a Swiftel
For Waiver of the Enhanced 911
Emergency Calling Systems Phase II
Deployment Rules for PCS Stations
WPOI260 and WPQL803**

CC Docket No. 94-102

To: Chief, Wireless Telecommunications Bureau

REQUEST FOR RULE WAIVER

Brookings Municipal Utilities d/b/a Swiftel Communications (“Swiftel”), hereby requests a temporary waiver of Section 20.18(g) of the Commission’s Rules to allow it to delay the phase-in of its deployment of a handset-based technology in meeting the Commission’s requirement for implementing E911 Phase II service.

I. BACKGROUND

Swiftel holds the licenses for Broadband Personal Communications Service stations WPOI260 (covering the Sioux Falls and Watertown, South Dakota SD BTAs, Block-A, partitioned from MTA012 as Submarket 2) and WPQL803 (covering the Sioux City, Iowa BTA, Block-B, partitioned from MTA032 as Submarket 2). The five-year construction benchmark for these licenses was June 23, 2000, and was met by Swiftel and the partitioner, WirelessCo., L.P., which is an affiliate of Sprint Spectrum, L.P. d/b/a Sprint PCS (“Sprint PCS”). Swiftel operates these systems pursuant to an affiliation arrangement with Sprint PCS, and will take measures to achieve E911 Phase II compliance consistent with those taken by Sprint PCS. In this regard,

Swiftel is requesting a limited and temporary waiver of Section 20.18(g) of the Commission's Rules.

In its implementation report filed last November, Swiftel informed the Commission that its systems utilize CDMA technology, and will use a handset solution to implement E911 Phase II capability, as was described in Sprint PCS's Phase II Report. As noted therein, neither Sprint PCS nor Swiftel control the manufacture of the handsets and related interface equipment, and both are dependent on their equipment vendors.

Sprint PCS estimates that it will have Phase II E911 service launched in one market before the October 1, 2001 deadline. That market will not be either of Swiftel's licensed areas. The unavailability of a sufficient number of compliant handsets and the conversion to third generation ("3G") technologies is complicating the process of meeting benchmarks for both Sprint PCS and Swiftel. It is especially true for Swiftel, however, which is serving rural areas that may not be given the same priority as major metropolitan areas for purposes of the handset distribution and network upgrades needed to process the Phase II information and deliver it to the PSAPs. Swiftel remains committed, however, to implementing Phase II E911 services as expeditiously as possible.

Sprint PCS is in the process of arranging for the distribution of the Samsung N300, which has GPS capabilities. According to their affiliation arrangement, Swiftel may only purchase such phones from Sprint PCS.¹ Swiftel has requested compliant phones at the earliest possible time and is awaiting their delivery.

¹ This agreement to purchase handsets through Sprint is designed to allow Swiftel to obtain the benefits of Sprint's volume equipment discounts, which is vital to Swiftel's business case. It will also speed the availability of Phase II-complaint phones to Swiftel's customers. Since Sprint will have far more leverage than Swiftel to negotiate for shipments of such phones at a time of high demand.

Swiftel's ability to adhere to the implementation schedule established in the Commission's *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442 (2000), depends on the ability of its equipment suppliers to have their products operational and delivered on time. As Sprint PCS described in its request for limited waiver, filed of July 30, 2001, it is having difficulty with its suppliers and vendors. Since Swiftel must depend on Sprint PCS for distribution of its handsets, any delay Sprint PCS experiences flows directly to Swiftel.

II. SWITEL'S COMMITMENT TO ACHIEVING COMPLIANCE

Since last November, Swiftel has been diligent in pursuing deployment of E911 Phase II technology in a timely manner. However, despite its best efforts and due to circumstances beyond its control, Swiftel recognizes that it will not be able to meet the phase-in schedule established in the Commission's *Fourth Memorandum Opinion and Order* and embodied in Section 20.18(g) of the Commission's Rules.

III. WAIVER REQUEST

Accordingly, Swiftel requests a waiver of Rule Section 20.18(g)(1), to allow it to delay the handset activation deadlines therein; and a waiver of rule Section 20.18(g)(2), to defer the requirement for upgrading its infrastructure and begin delivering E911 Phase II service to a requesting PSAP to the extent requested by Sprint PCS. Swiftel has requested E911 capable handsets from Sprint PCS and anticipates that they will be timely delivered to meet the October 1, 2001 deadline, unless placed on back-order. Sprint PCS estimates that it may achieve a 10% activation rate by December 31, 2001, and hopes to attain a 30% activation rate by June 30, 2002. Swiftel requests a concomitant waiver.

In its Further Supplemental Phase II Implementation Report filed with the Commission September 20, 2001, Sprint PCS estimates that for Nortel-based equipment, it should meet its estimated network installation schedule of August 1, 2002.² Accordingly, Swiftel requests a concomitant waiver.

IV. WAIVER STANDARDS

In its *Fourth Memorandum Opinion and Order*, the Commission indicated that the Phase II rules are intended to be applied in a manner that takes into account practical and technical realities.³ Recognizing that practical and technical realities might delay Phase II implementation, the Commission established a general approach in dealing with possible requests for waiver of the Phase II requirements.⁴ Thus, the Commission provided that its rules may be waived for good cause shown, consistent with Rule Section 1.3.⁵ It recognized, in the case of E911, that there could be instances where technology-related issues or exceptional circumstances may mean that deployment of Phase II may not be possible by October 1, 2001.⁶ The Commission cautioned that waiver requests should be specific, focused and limited in scope, with a clear path to full compliance and should document the efforts aimed at compliance.⁷

² Swiftel's system uses Nortel technology. Please note that the date cited by Sprint PCS "represents Phase II network capability for Sprint markets serviced by Nortel switches, *not* the date provision of commercial service will necessarily be commenced." Sprint PCS Further Supplemental Report at 3.

³ 15 FCC Rcd 17442, at ¶ 22.

⁴ *Id.*, at ¶¶ 42-45.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

V. SWIFTEL HAS MET THE WAIVER STANDARDS

As shown above, Swiftel has met the Commission's standards for obtaining the requested waiver of Rule Section 20.18(g). While Section 20.18 of the Commission's Rules imposes E911 Phase II obligations only on Commission licensees (by reason of limitations on the Commission's statutory authority), the Commission has repeatedly acknowledged the obvious, namely that achieving full compliance requires the cooperative efforts of carriers, equipment manufacturers, suppliers and government officials responsible for public safety activities. As a service provider only, Swiftel would be unable to achieve compliance with the Commission's Phase II requirements without the availability of necessary equipment and the readiness of the public safety answering points in its area. The simple truth is that there is no technology currently available that will satisfy the Commission's Phase II accuracy requirements in all respects within the established deadlines.⁸ It is only recently that automatic location technology has advanced to the point where Phase II compliance can become a reality. However, once compliant equipment becomes commercially available, it will undoubtedly be several more months before Swiftel will be able to obtain delivery of this equipment. Sprint PCS has not indicated how and when it will make Phase II E911 compliant handsets available to its affiliates.

Grant of the limited request for waiver herein is in the public interest. Swiftel has been diligent in pursuing implementation of Phase II but is unable to do so due entirely to circumstances that are beyond its control. The instant waiver request is specific and focused. It details the unavoidable delays Swiftel has encountered through no fault of its own. It sets out a clear path to compliance once the necessary equipment becomes available. Moreover, Swiftel has learned that the Public Safety Answering Points (PSAPs) within its licensed areas are not yet

⁸ See *Petition for Waiver* in this docket, filed August 3, 2001, by Triton PCS License Company, L.L.C., pp.4-5.

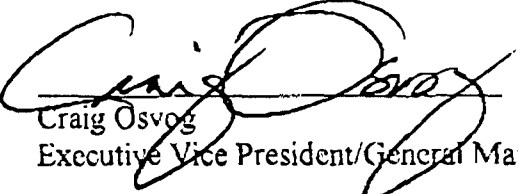
capable of utilizing E911 Phase I location information, much less Phase II ALI information. The most advanced PSAP in this regard is the Metro Communications Authority of Minnehaha County, South Dakota, which serves the Sioux Falls area. As reported in the August 10, 2001 Sioux Falls Argus Leader, "Metro Communications has plans to integrate wireless communications [location technology] in two phases to be finished by 2003," according to David Atherton, Director of Metro Communications. A copy of the relevant article is attached hereto. Because of a budget crunch, it is reported that Minnehaha County will not even budget funds for E911 Phase I and Phase II upgrades until next year. Therefore, the public interest will not be harmed by a grant of the requested waiver, because Swiftel should have its Phase II solution deployed well ahead of when the relevant PSAPs are prepared to utilize this advanced capability.

VI. CONCLUSION

In view of the foregoing, the waiver herein requested is in the public interest and should be granted.

Respectfully Submitted,

By


Craig Osvoog
Executive Vice President/General Manager

Dated: September 27, 2001

Attachment A
Article from Sioux Falls Argus Leader
of August 10, 2001

August 10, 2001

Sioux Falls Argus Leader

EMERGENCY SERVICES

New computers could find 911 cell phone calls

Metro Communications plans upgrade

BY RON WALTERS
Argus Leader

A new computer system would allow Minnehaha County's emergency dispatchers to locate people who make 911 calls on cellular phones and lead to faster response times, according to Metro Communications officials.

The new computer-aided dispatch, or CAD, system would use familiar personal computers rather than the older mainframe technology.

"Basically, we are using 1970s technology in the year 2001," said Randy Stratton, chairman of the Regional Emergency Medical Services Authority, which oversees ambulance service in Minnehaha County.

Metro Communications sought \$1.3 million this year for technological improvements to the 911 dispatch center, including estimates of \$800,000 for computer-aided dispatch.

The city of Sioux Falls has included money in next year's budget to help pay for the upgrade. But the Minnehaha County Commission — which is in a budget crunch and recently opted out of the state's property tax limits — left the funds out of this year's plans.

Efforts to increase the amount that the county exceeded the tax limits from \$500,000 to \$900,000 to pay for the system were unsuccessful.

Despite the funding issues, Metro Communications officials said they will push ahead with improvements where they can. The wireless applications in particular will help serve the rural areas of the county, said David Atherton, director of Metro Communications.

"The speed and accuracy of our dispatching is what we are seeking," said David Atherton, director of Metro Communications.

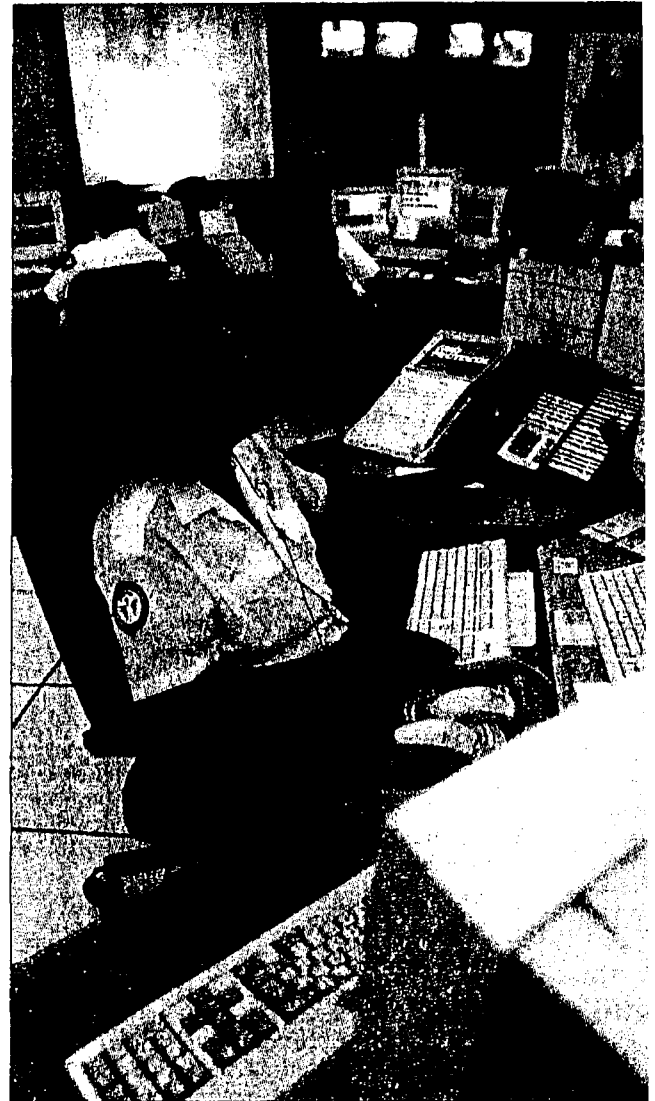
One feature of the 911 system allows dispatchers to identify where people are when they call on traditional phone lines. That is critical if the caller is not able to speak due to injuries or other medical reasons.

The evolving wireless technology allows dispatchers to locate cell phone users who dial 911.

Metro Communications has plans to integrate wireless communications in two phases to be finished by 2003, Atherton said.

A study by Elert & Associates of Stillwater, Minn., focused specifically on what is needed for a new CAD system.

Currently, the system relies primarily on conversation between dispatchers and emergency personnel to relay information on location and other vitals. With a new CAD system, that tracking and transfer will take place automatically, allowing for quicker and more accurate dispatch decisions, according to the consultant.



VAL KOEPPNER / AP

Metro Communications shift supervisor Jan Harris takes a 911 call in the dispatch center. The center has made several changes in the past few years, but a recent report calls for more updates.

Some emergency service officials in the rural areas are satisfied with current procedures, but await the arrival of the new technology.

"We are very pleased with dispatch services of Minnehaha County," said Tim Braithwaite, Manager of Rural Metro Area services. "We're extremely excited about the arrival of a new CAD system because it will improve our response times."

See **COMPUTERS**, page 2

'It's a record-breaking day

Attendance leaps in milder weather, says Sioux Empire Fair manager

BY ROBERT MORAST
Argus Leader

After two days of average and below-average attendance, day three of the Sioux Empire Fair rebounded with what appears to be record

Sheryl Crow at the grandstand and Trick Pony on the Front Porch — along with ideal weather contributed to Thursday's big crowds. The

MORE Inside
Sheryl Crow concert review, 38
List of today's events at fair, 48

day there. "The kids enjoy it more because it's not sweaty," Korey Potter said.

The weather should remain pleasant

day attendance figures similar to last year. But Thursday's crowds are the fair's spirits.

"I'm just excited," said Rick Erickson, who said more than 2,500



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Leonard Frank Dunham

San Diego, CA - Leonard Frank Dunham, 81, a former Sioux Falls, South Dakota business man who with his wife, Hazel, owned and operated Dunham Appliance from 1948 to 1986 died January 9, 2001 in San Diego, California.



He was born May 18, 1919 in Sioux City, Iowa. His parents were John and Lillian O'Harrow Dunham. After graduating from Central High School, he spent one year at Drake University studying Latin. He then moved to Chicago, Illinois and worked for Aladdin Radio where he met and married Hazel E. Halseth October 21, 1944. During World War II, Leonard joined the navy. After the war, Leonard and Hazel and their two sons Ronald and Richard moved to Sioux Falls. Soon thereafter their daughters Judy and Linda were born. They moved to San Diego in 1986. They managed Sleepy Hollow Apartments. Since Hazel's death in 1990, Leonard vacationed in Sioux Falls in the summer and lived with his daughters on Coronado Island in San Diego being the "best Grandpa ever."

A tribute to Leonard F. Dunham, as written by his grandson Kyle McKenzie in 1999.

"He struggled to get up from the couch with a smile on his face like always. That is my grandpa Leonard Dunham. He is the most caring, giving, and fun person that is that old I have met. He is getting old but he is still a lot of fun. He is also always giving something to someone. Also he is always caring for almost everyone.

First of all, my grandpa is a great person and cares for almost everyone. If I am ever sick, he will always come over and keep me company. If I see him in town, he will always check on me to see if we have enough food or if we need any coupons. For holidays he is always at my house helping with cooking or something else. Another thing is he is also a very giving person.

He is always giving something to someone to help or just make him or her happy. Every single day.

Computers: Could track hazardous materials info

Continued from 1B

live in a society that's technology driven and we are using old technology."

In Crooks, Fire Chief Terry Blackford would like to see a new CAD system track hazardous materials information for each call received.

"The new system should provide any hazardous-materials information that may be in the area," Blackford said. "Information on things like tractors in machine sheds, location of propane tanks or any dangerous materials stored at the scene."

Blackford estimated the Crooks Fire Department fielded nearly 100 emergency calls last year, including both medical and fire. This year, the department has responded to 42 calls.

In Sioux Falls, emergency and nonemergency calls make up approximately 15,000 calls per month according to Deb Berreth, assistant director of Metro Communications.

"Monthly, we handle about 8,000 to 9,000 emergency calls and about 6,000 to 7,000 non-emergency calls," Berreth said. "Of the total calls, about 600 to 700 are emergency medical calls."

An earlier study in 1998, on dispatch services, focused on staffing schedules, employee wages and work-station environments, all of which have been addressed, Atherton said.

Based on the 1998 study, specific improvements included new office furniture, relocation to a larger room and acquisition of new computer monitors.

The requested improvements are an effort to stay ahead of concerns the public may have about the 911 system, said Tom Dempster, chairman of the Metro Management Council, which oversees the dispatch center.

"The worst thing we can do is wait to hear complaints before addressing any possible service issues," Dempster said.

Reach reporter Ron Walters at 331-2316

Assault

Continued from 1B

Almost two years ago, Janis arrested for assaulting a 74-year-old woman.

Deb Aden, executive director of the Rape & Domestic Abuse Center in Sioux Falls, said ordeal is something from which the sexual assault victim will never completely recover.

"Her soul has been ripped out," Aden said. "She'll always have triggers, smells, clothing, or things that make her remember."

Because the harm came from a relative, Aden said the victim is never able to trust again.

"This is going to affect aspects of her life," Aden said. "She can heal, but it will change her life forever. She needs immediate intervention."

Counselors at the Rape Domestic Abuse Center try to empower victims of sexual assault as soon as possible, she said.

"She needs to start making decisions, taking control, right away," Aden said.

Mary Metcalf, executive director of Mita Maske Ti Ki, a shelter for Native American women and children victimized by domestic violence, said she's assisted over 100 town victims in Sioux Falls.

Her shelter has relationships with shelters on the state's reservations, and is able to get the victims home.

"We take care of them," Metcalf said. "We'll take them all the way home, or meet a counselor halfway. That's important."

Reach reporter Lee Williams at lwilliam@argusleader.com or 331-2318

Schedule today at the Sioux Empire Fair

- | | |
|--|--|
| 8 A.M. FFA Beef Show, West Arena | of Bridlewood Barn |
| ALL DAY Implement displays by Beckman, Pfeiffer and Sioux International, grass north of Old MacDonald's Farm; chick hatching, Old MacDonald's Farm; Artists in Action, Arts Center; "The Power of Fire," Sioux Falls Fire Department, east of Arts Center; Perry's Exotic Animal Petting Zoo, grass area east of Bridlewood Barn | 3 P.M. South Dakota Wheat Commission Pasta Cooking, Arts Center |
| 9 A.M. Open All Breed Horse Show, Expo Building | 4 P.M. Open Simmental Show, Outside Arena |
| 11 A.M. Fleischmann's bread world.com bread competition, Arts Center | 4:30 P.M. K-9's Comets Extreme, Frisbee Dogs, grass area south of Bridlewood Barn |
| 12:30 P.M. Team Extreme Bike Trials, asphalt near 4-H Snack Stand | 5 P.M. Guinness Book of World Records, Omelets Sheraton Chef John Gilbertson, grass area south of Bridlewood Barn; Visual Coordinator/Decorator Nancy Jo Nugent, Arts Center |
| 1 P.M. Open Angus Show, Outside Arena; program by Washington Pavilion, Arts Center | 5:30 P.M. Team Extreme Bike Trials, asphalt near 4-H Snack Stand |
| 1 TO 7 P.M. Live music on the Front Porch, The Neighborhood | EVENING Pony hitching and driving, Old MacDonald's Farm |
| 1:30 P.M. K-9's Comets Extreme, Frisbee Dogs, grass area south of Bridlewood Barn | 6 P.M. Free concert by The Belamy Brothers, The Neighborhood |
| 2 P.M. Program: Splendor in the Sky, Old MacDonald's Farm | 7 P.M. South Dakota Wheat Commission Bread Machine Contest, Arts Center |
| | 7:30 P.M. Team Extreme Bike Trials, asphalt near 4-H Snack Stand |
| | 8 P.M. Exotic Animal Education, Old MacDonald's Farm |

Rapid City police officer slain Saturday is buried

RAPID CITY (AP) - A Rapid City police officer gunned down Saturday night was buried Thursday.

Robert Ludeman, 24, was found dead in his home after a call to 911 by his fiancée, authorities said. Kenneth Leon Martin, 25, of Rapid City faces first-degree murder charges. No motive has been suggested.

Ludeman had taken his oath of office only three days earlier.

Law enforcement officers from